



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 05, 2022

IN THE MATTER OF:

Appeal Board No. 622470

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 24, 2021, on the basis that the claimant voluntarily separated from employment without good cause or in the alternative disqualifying the claimant from receiving benefits, effective September 24, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 24, 2021 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed March 22, 2022 (A.L.J. Case No.), the Administrative Law Judge sustained the initial determination disqualifying the claimant from receiving benefits, effective September 24, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 24, 2021, cannot be used toward the establishment of a claim for benefits, and made no decision with respect to the alternate disqualification disqualifying the claimant from receiving benefits on the basis that the claimant voluntarily separated from employment without good cause.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a

hearing. The record reveals that the employer requested an adjournment as it was not prepared to proceed at the hearing. Additional testimony is necessary as to whether there was a governmental mandate regarding the COVID-19 vaccine; whether the employer was subject to that mandate; whether the employer considered the claimant's request for an exemption; why the employer chose the date of September 22, 2021, as the date to discharge the claimant.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER